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Presentment Date: October 31, 2012

Time: 12:00 p.m.

Objections Due: October 31, 2012

Time: 11:00 a.m.

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
And Bernard L. Madoff*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**TRUSTEE'S MOTION FOR AN ORDER APPROVING
THE RETENTION OF TRIAY STAGNETTO NEISH AS
SPECIAL COUNSEL NUNC PRO TUNC AS OF SEPTEMBER 11, 2012**

Irving H. Picard ("Trustee"), as trustee for the substantively consolidated liquidation of
Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor

Protection Act, 15 U.S.C. §§ 78aaa, et seq. (“SIPA”),¹ and Bernard L. Madoff (together, the “Debtors”), by and through his undersigned counsel, for his motion (the “Motion”) for authority to retain Triay Stagnetto Neish (“TSN”) as special counsel, *nunc pro tunc* as of September 11, 2012, and in support thereof respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion pursuant to SIPA § 78eee(b) and 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this SIPA liquidation case and this Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are § 78eee(b)(3) of SIPA and §§ 327(e), 328, 329 and 330 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. and Fed. R. Bankr. P. 2014.

Background

3. On December 11, 2008 (the “Filing Date”),² the Securities and Exchange Commission (“SEC”) filed a complaint in the United States District Court for the Southern District of New York against defendants Bernard L. Madoff and BLMIS (together, the “Defendants”) (No. 08 CV 10791). The complaint alleged that the Defendants engaged in fraud through investment advisor activities of BLMIS.

4. On December 15, 2008, Judge Stanton entered an order pursuant to SIPA (the “Protective Decree”), which, in pertinent part:

- a) appointed the Trustee for the liquidation of the business of BLMIS pursuant to § 78eee(b)(3) of SIPA;

¹ For convenience, future reference to SIPA will not include “15 U.S.C.”

² See § 78lll(7)(B) of SIPA.

- b) appointed Baker & Hostetler LLP (“Baker Hostetler”) as counsel to the Trustee pursuant to § 78eee(b)(3) of SIPA; and
- c) removed the case to this Bankruptcy Court pursuant to § 78eee(b)(4) of SIPA.

5. The Trustee currently has pending two adversary proceedings involving defendants and witnesses located in Gibraltar, *Picard v. Vizcaya*, Adv. Pro. No. 09-01154 (BRL), and *Picard v. Kohn et al.*, Adv. Pro. No. 10-05411 (BRL) (the “Adversary Proceeding”), each of which require the assistance of TSN as special counsel in connection with matters pending in Gibraltar and other situations where Gibraltarian law is at issue.

Relief Requested

6. The Trustee has determined that it will be necessary to engage new counsel to represent him in Gibraltar. To date, the Trustee has been represented in Gibraltar by the law firm of Attias & Levy, the retention of which was approved by this Court by order dated April 7, 2009, [ECF 147] *nunc pro tunc* as of March 13, 2009. The legal team at Attias & Levy, led by Keith Azopardi, that had been working with the Trustee, has recently moved to TSN. The Trustee, therefore, in order to continue to have Mr. Azopardi represent him, proposes to retain and employ TSN as its special counsel with regard to the recovery of customer property in Gibraltar, and any related matters as directed by the Trustee, *nunc pro tunc*, effective as of September 11, 2012.

7. The Trustee seeks to retain TSN as special counsel because of its knowledge and expertise in the laws of Gibraltar, and because of the TSN legal team’s knowledge of, and familiarity with, the Trustee’s recovery efforts in Gibraltar.

8. The services of TSN are necessary and essential to enable the Trustee to execute faithfully his duties herein.

9. TSN has indicated a willingness to act on the Trustee's behalf to render the foregoing professional services.

10. The Trustee submits that TSN's provision of professional services to the Trustee is permissible under section 78eee(3) of SIPA and is in the best interest of the Debtors' estate and customers and creditors.

11. To the best of the Trustee's knowledge, and except as disclosed in the declaration of disinterestedness of Mr. Azopardi (the "Azopardi Declaration"), executed on September 13, 2012 and annexed hereto as Exhibit A, the members, counsel and associates of TSN are disinterested pursuant to section 78eee(b)(3) of SIPA and do not hold or represent any interest adverse to the Debtors' estates in respect of the matter for which TSN is to be retained.³ TSN's employment and retention is necessary and in the best interests of the Debtors' estates and their customers and creditors.

12. TSN will be compensated at agreed hourly rates, less a discount of no less than ten percent (10%), which represent the same rates charged by Attias & Levy as of September 2012 in connection with the representation of the Trustee in Gibraltar. The discounted rates are as follows:

Level of Experience	Rates (British Pound Sterling)
Partner	£200
Associate	£110-£180

13. Applications for compensation to TSN will be filed with this Court pursuant to applicable statutes and rules. SIPC has no objection to this Motion and, pursuant to SIPA section 78eee(b)(3), SIPC specifies TSN as special counsel that the Trustee should be authorized to retain for the purposes identified herein.

³ TSN had previously served as counsel to SIAM, a defendant in the Adversary Proceeding. However, the Trustee and SIAM consummated a settlement in advance of the retention of TSN, rendering moot that conflict.

Notice

14. Notice of this motion will be provided by U.S. Mail or email to (i) all parties that have filed a notice of appearance in this case; (ii) the SEC; (iii) the Internal Revenue Service; and (iv) the United States Attorney for the Southern District of New York; (v) SIPC; and (vi) TSN, pursuant to the Order Establishing Notice Procedures (ECF No. 4560). The Trustee submits that no other or further notice is required.

WHEREFORE, the Trustee respectfully requests that the Court enter an order substantially in the form of Exhibit B hereto, (a) granting this Motion; (b) authorizing the Trustee to employ TSN as special counsel for the purposes described herein, *nunc pro tunc* as of September 11, 2012; and (c) granting the Trustee such other and further relief as is just and proper.

Dated: New York, New York
October 23, 2012

Respectfully submitted,

/s/ Marc Hirschfield

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